

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re FTCA Flint Water Cases

Civil No. 4:17-cv-11218
(Consolidated)

This Order Relates to:
ALL CASES

Linda V. Parker
United States District Judge

**STIPULATED ORDER TO MODIFY AND EXTEND
CMO 4 DISCOVERY DEADLINES**

Pursuant to Case Management Order No. 4 (“CMO 4”) section VI, the parties, by and through counsel, hereby agree and stipulate to extending discovery deadlines, as set forth below, and the Court accepts and adopts the stipulated deadline extensions.

Pursuant to CMO 4 paragraph II(10), the current deadline for completing fact discovery for the FTCA Discovery Group plaintiffs’ claims (“Fact Discovery Deadline”) is December 14, 2022. There is good cause to extend this deadline 120 days, *i.e.*, to April 13, 2023. Specifically, the neuropsychologist the United States had retained to conduct medical examinations of bellwether plaintiffs recently withdrew for medical reasons, which has delayed formulation of a DME protocol and completion of the DMEs; the parties have not yet agreed on search terms to be employed by the United States to respond to Plaintiffs’ requests for production, and

the United States believes the search and document review process will take several months; and the scheduling of depositions is ongoing but will require additional time given the number of bellwether plaintiffs. Extending the Fact Discovery Deadline will require a concurrent extension of other pending deadlines set forth in CMO 4. All other terms and conditions of CMO 4 and addendums or supplements thereto shall remain in effect.

Accordingly, the parties agree, and the Court orders, that discovery deadlines in CMO 4 are modified and extended as follows:

Lay Witness Lists (CMO 4 ¶ II(6))	By February 14, 2023, any party may supplement a prior Rule 26(a)(1) disclosure.
Home Inspections (CMO 4 ¶ II(7))	Completed by February 28, 2023.
Federal Rule of Civil Procedure (“FRCP”) 35 Defendant Medical Examinations (CMO 4 ¶ II(8)):	Completed by March 15, 2023.
Third-party document or deposition subpoenas (CMO 4 ¶ II(9)):	By March 15, 2023.
Fact Discovery Deadline (CMO 4 ¶ II(10)):	Completed by April 13, 2023.
Motion/Response/Reply Relating to Discretionary Function Exception (CMO 4 ¶ II(11)):	The United States may file a Rule 12(h)(3) motion relating to the FTCA’s discretionary function exception by May

	26, 2023; Plaintiffs may file a response within 60 days of the motion; United States may file a reply within 21 days of Plaintiffs' response.
Submission of Expert Discovery Protocol to Court for approval or, if necessary, competing proposals: ¹	By March 28, 2023.
Expert Discovery (CMO 4 ¶ II(12)):	<p>a. Disclosure of expert testimony by plaintiffs, pursuant to FRCP 26(a)(2), by June 2, 2023;</p> <p>b. Disclosure of expert testimony by the United States, pursuant to FRCP 26(a)(2), by August 8, 2023;</p> <p>c. By September 5, 2023, the parties will meet and confer regarding when the parties' supplemental disclosures under FRCP 26(a)(2)(D)(ii) (if any) will be due;</p> <p>d. Depositions of experts disclosed by plaintiffs by October 6, 2023;</p>

¹ CMO 4 does not currently require submission of an Expert Discovery Protocol to the Court, but the parties will meet-and-confer to attempt to develop a mutually agreeable protocol to streamline expert discovery, including, but not limited to, provisions to facilitate scheduling of depositions of expert witnesses disclosed pursuant to FRCP 26(a)(2) and exchanging the facts or data considered by an expert witness in forming opinions disclosed in a report, pursuant to FRCP 26(a)(2)(B)(ii), prior to an expert's deposition.

	e. Depositions of experts disclosed by the United States by November 6, 2023.
Motions/Response/Reply Related to Subject Matter Jurisdiction, Summary Judgment and Daubert Motions (CMO 4 ¶ II(13)):	Motions related to subject matter jurisdiction (other than the discretionary function exception, as noted above), for summary judgment, or Daubert motions by December 1, 2023; Responses within 60 days from when the motion is filed; Replies within 21 days from when the response is filed.

IT IS SO ORDERED.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: November 30, 2022

Dated: November 22, 2022

Respectfully submitted,

s/ Jason T. Cohen
Jason T. Cohen (ME Bar #004465)
Michael L. Williams (DC Bar #471618)
Eric Rey (DC Bar #988615)
Trial Attorneys
United States Department of Justice
Civil Division, Torts Branch
Environmental Tort Litigation
175 N Street, NE

Washington, DC 20002
E-mail: Jason.T.Cohen@usdoj.gov
Phone: 202-514-0335
Fax: 202-616-4473

Counsel for United States

s/ Cary S. McGehee (w/ permission to USA)

Cary S. McGehee (P42318)
Beth M. Rivers P33614
Pitt McGehee Palmer Bonanni & Rivers PC
117 W. Fourth Street, Ste. 200
Royal Oak, MI 48067
Tel: (248) 398-9800
cmcgehee@pittlawpc.com

/s/ Patrick Lanciotti (w/ permission to USA)

Hunter Shkolnik
Patrick Lanciotti
Paul J. Napoli
Napoli Shkolnik PLLC
360 Lexington Avenue, 11th Floor
New York, NY, 10017
Tel: (212) 397-1000
planciotti@napolilaw.com
pnapoli@napolilaw.com

FTCA Plaintiffs Liaison Counsel